

APR 02 2007

Application No.: 09/674,546

2

Docket No.: 223002101200

REMARKS

The Examiner has required restriction between claims 2 and new claims 19-21; claim 4 and new claims 22-28; and new claims 29-32. Applicant hereby provisionally elect claim 4 and new claims 22-28, with traverse.

The present application is a national stage application submitted under 35 U.S.C. 371, and therefore the restriction practice is governed by PCT Rule 13 as set forth in 37 C.F.R. 1.475. All three sets of claims include the polypeptide defined by the amino acid sequence of SEQ ID: 2536 as "a special technical feature" since each of the independent claims read upon this amino acid sequence (*i.e.*, this feature is novel and inventive over the prior art). Section 1850 of the MPEP states:

Although lack of unity of invention should certainly be raised in clear cases, *it should neither be raised nor maintained on the basis of a narrow, literal or academic approach.* There should be a broad, practical consideration of the degree of interdependence of the alternatives presented, in relation to the state of the art as revealed by the international search or, in accordance with PCT Article 33(6), by any additional document considered to be relevant. If the common matter of the independent claims is well known and the remaining subject matter of each claim differs from that of the others without there being any unifying novel inventive concept common to all, then clearly there is lack of unity of invention. If, on the other hand, there is a single general inventive concept that appears novel and involves inventive step, then there is unity of invention and an objection of lack of unity does not arise. For determining the action to be taken by the examiner between these two extremes, rigid rules cannot be given and each case should be considered on its merits, the benefit of any doubt being given to the applicant.

To require restriction between three independent claims directed to overlapping sets of polypeptides which have the common special technical feature of the polypeptide having the amino acid sequence of SEQ ID NO: 2536 seems to be a very narrow or literal approach which the MPEP indicates is not allowed. Even under the arguably narrower rules applied to 35 U.S.C. § 111 patent applications, the restriction would be improper as there would be no undue burden on the searching since a simple blast search using SEQ ID NO: 2536 would be sufficient for all three sets of claims.

APR 02 2007

NO. 806 P. 8

APR. 2. 2007 12:44PM

MOFO 28TH FL

Application No.: 09/674,546

3

Docket No.: 223002101200

Therefore, applicants respectfully request that the Examiner withdraw the species election requirement and prosecute all pending claims in the application.

Applicants request examination of the elected subject matter on the merits.

In addition, please direct all further communications in this application to:

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In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing 223002101200. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

By OA
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